

memorandum

DATE: February 9, 2000

REPLY TO
ATTN OF: Office of Environmental Policy and Guidance (EH-413):Whitehead:6-6073

SUBJECT: **Notice of Rulemaking and Data Availability for Non-Liquid Polychlorinated Biphenyls (PCBs)**

TO: Distribution

Purpose of this Memo

[1] To notify DOE elements that the Environmental Protection Agency (EPA) issued a Notice of Rulemaking and Data Availability for Non-liquid PCBs on December 10, 1999 (64 FR 69358). This notice officially re-opens the comment period for the rule authorizing the use and distribution-in-commerce of non-liquid PCBs.

[2] To reconvene the DOE PCB focus group to review and provide comment on this NPRM in support of a consolidated Departmental response to EPA.

Discussion

PCB regulations at 40 CFR Part 761 have never authorized broad-based general uses as non-liquid PCBs, such as paint, coatings, sealants, plastics, felt, insulation, gaskets, adhesives, caulking, and fluorescent light ballast potting material. EPA decided not to include a use authorization for non-liquid PCBs when the final rule on the PCB Disposal Amendments was promulgated on June 29, 1998 (63 FR 35384) because the agency asserted that it did not have sufficient data on which to make a "no unreasonable risk" finding for the non-liquid PCB use authorization as required by TSCA. [The Agency deferred the proposed authorization use of non-liquid PCBs to a separate rulemaking for 2 years.]

Before EPA is able to issue the final rule authorizing the use and distribution-in-commerce of non-liquid PCBs, the Agency needs to collect and analyze data on the uses of non-liquid PCBs not yet reported, concentration of PCBs in the non-liquid PCB materials in use, and potential risks of exposure to such non-liquid PCB materials.

NPRM Access

The NPRM is accessible for viewing/downloading via the Internet at:
<http://www.epa.gov/fedrgstr/EPA-TOX/1999/December/Day-10/t32079.htm>

Action

EH-41 is soliciting Headquarters and Field organizations' participation on the PCB focus group to review the NPRM and to provide comment for a consolidated Departmental response to EPA. Persons interested in participating on the PCB focus group are invited to participate in a **conference call on March 14, 2000 from 2:00 - 4:00 p.m.** Eastern Standard Time. The call in number is **(301) 903-6013**. The conference call will establish (reconvene) the group, discuss potential issues, data gaps, and set time lines for submission of comments.

The NPRM involves two comment deadlines for submission of: [1] data on uses of non-liquid PCBs not yet reported to EPA and on potential risks of exposure to non-liquid PCB materials; and [2] comments on the proposed authorized use of non-liquid PCBs.

To assist the focus group, EH-413 has compiled a list of previous comments made by DOE concerning the authorized use of non-liquid PCBs. The attached list shows that comments previously submitted by DOE have been included in the official docket for the rulemaking. The focus group will determine if additional comments are necessary.¹

Contact

Questions concerning the focus group, NPRM, or other information contained herein may be directed to Beverly Whitehead of my staff at (202) 586-6073, fax (202) 586-3915, or e-mail beverly.whitehead@eh.doe.gov.



Thomas T. Traceski
Director, RCRA/CERCLA Division
Office of Environmental Policy and Guidance

Attachment

¹EH-41 memoranda dated May 5, 1995 and July 2, 1997, subject: Comments on Internal Working Draft of Disposal of PCBs - Final Rule.

List of Previous DOE Comments and Data Submissions on Authorizing the Use of Non-Liquid PCBs

No.	Comment or Data Submission	Source	Disposition	EPA Docket No.
1	Requirement should state specific procedures or define good faith efforts for a facility to demonstrate compliance with use authorization for non-liquid PCBs (e.g., establishment of a set of "Assumption Rules" for detectable levels of PCBs in non-liquid materials)	05/05/95, p. 48		OPPTS-66009A [C1-147]
2	Requirement for annual retesting of non-liquid PCBs is excessive and not cost-effective; suggested alternative is to (1) test a representative sample and document condition yearly or (2) prepare a best management plan covering periodic inspections with corrective actions for leaks or disrepair. Annual monitoring should not be required for non-liquid PCBs in good condition	05/05/95, p. 49		OPPTS-66009A [C1-147]
3	Requirement for documentary evidence of historical use (use prior to 1979) is impractical; suggested alternative is to document date of building, structure, or major renovation at which time the non-liquid PCB material was installed	05/05/95, p. 49		OPPTS-66009A [C1-147]
4	Requirement for Mark M _L should be either dropped or replaced with a different type of generic marking	05/05/95, pp. 49-50		OPPTS-66009A [C1-147]
5a	Requirement for notification of EPA within 30 days of the use of non-liquid PCBs should be replaced by recording an entry into Annual Document Log within 45 days	05/05/95, p. 50 07/02/97, p. 4		OPPTS-66009A [C1-147 & C1-320]
5b	Requirement for notification of EPA of the use of non-liquid PCBs should be exempt for CERCLA sites	07/02/97, pp. 4 & 10		OPPTS-66009A [C1-320]

List of Previous DOE Comments and Data Submissions on Authorizing the Use of Non-Liquid PCBs

No.	Comment or Data Submission	Source	Disposition	EPA Docket No.
6	Clarification that “in use” of a non-liquid PCB material in a building mean compliance with the use conditions until the building is decommissioned and deactivated (D&D) to avoid separate D&Ds for PCBs and non-PCBs	05/05/95, p. 50		OPPTS-66009A [C1-147]
7	Clarification of a methodology for air and wipe sampling for gaskets; wipe sampling should be restricted to cases of PCB migration due to spills from gaskets or for waste characterization of associated ventilation ducts. Also, allow for decontamination of gaskets	05/05/95, p. 51		OPPTS-66009A [C1-147]
8	Eliminate any restrictions (e.g., marking or monitoring) associated with continued use of intact fluorescent light ballasts	05/05/95, p. 51		OPPTS-66009A [C1-147]
9	Worker safety and health issues associated with non-liquid PCBs should be addressed under OSHA rather than TSCA. If retained under TSCA, EPA should specify the health risk information an employer should provide to employees.	05/05/95, p. 52		OPPTS-66009A [C1-147]
10	Requirement to notify EPA within 24 hours of the (1) nature and extent of and (2) corrective actions for a migration of non-liquid PCBs is impractical. Clarification of environmental release of non-liquid PCBs needed	05/05/95, p. 52		OPPTS-66009A [C1-147]
11	Requirement for annual renewal of a class exemption for the distribution in commerce of non-liquid PCBs and non-liquid PCB Items is too time-consuming and burdensome.	07/02/97, p. 4		OPPTS-66009A [C1-320]
12	Requirement for recordkeeping of remediation and repair of non-liquid PCB materials in the Annual Document Log should be dropped because it is too burdensome and costly	07/02/97, p. 11		OPPTS-66009A [C1-320]

List of Previous DOE Comments and Data Submissions on Authorizing the Use of Non-Liquid PCBs

No.	Comment or Data Submission	Source	Disposition	EPA Docket No.
13	Clarification of how recordkeeping requirements for non-liquid PCB materials would affect the current requirement for Annual PCB/Radioactive Report and Annual Federal Facility Compliance Agreement Report	07/02/97, p. 11		OPPTS-66009A [C1-320]
14	Clarification that non-liquid materials with PCBs < 50 ppm are not prohibited from use and distribution in commerce	12/10/97, memo from GC to EH-41	Not included in DOE comment package because EPA deferred provision for authorized use of non-liquid PCBs	
15	Provision authorizing historic uses of non-liquid PCBs needs to be finalized and issued as soon as possible. Allow for interim relief if authorized use is not included in PCB Disposal Amendments. Non-liquid PCB materials are too pervasive to enable enforcement discretion letters serve as the appropriate vehicle for authorizing use of such materials	12/10/97, memo from SRS to EH-41	Not included in DOE comment package because EPA deferred provision for authorized use of non-liquid PCBs	
16	Letter from T. Traceski to John Melone, subject: Analytical Study of High-Concentration PCB Paint at the Heavy Water Components Test Reactor (HWCTR) at Savannah River Site (October 29, 1998) [data submission]	DOE-SRS		OPPTS-66009F [C3-018]
17	Letter from A.R. Seepo to Kim Tesa, subject: Documentation of Research regarding Historical Uses of PCBs in Paint (April 19, 1995) [data submission]	Schenectady Naval Reactors Office		OPPTS-66009A [C3-004]
18	Letter from N. Lowry to David K. Hannemann, subject: Detailed Information on PCB Analyses of Painted Surfaces (May 28, 1997) [data submission]	DOE-SRS		OPPTS-66009A [C3-005]

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No .	Comment or Data Submission	Source	Disposition	EPA Docket No.
19	Supplemental Data on PCB Paint at U.S. DOE-SRS, WSRC-TR-99-00194 (June 10, 1999) [data submission]	DOE-SRS	Needs to be submitted to the docket; copy provided to EH-413	